

Introduced by Senator Dutton

(Coauthors: Assembly Members Adams and Emmerson)

February 23, 2007

An act to amend Section 11462 of the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

SB 710, as introduced, Dutton. AFDC-FC: group homes: rates.

Existing law, pursuant to the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, requires the State Department of Social Services to classify group home programs and to establish rates for foster care providers licensed as group homes according to those classifications. Existing law prohibits the department from establishing a rate for a new program of a new or existing provider, or for a new program at a new location for an existing provider, unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county, that the provider is capable of effectively and efficiently operating the program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

This bill would delete the authority for the letter of recommendation to be issued by the primary placing county or regional consortium of counties, thus requiring the letter of recommendation to be issued only by the host county.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) (A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, "The Classification of Group Home Programs under the Standardized Schedule of Rates System," prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, “standardized schedule of rates” means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department’s issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department’s RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program’s rate, unless the host county, the primary placing county, or a regional consortium of counties

1 submits to the department in writing that the program is needed
2 in that county, that the provider is capable of effectively and
3 efficiently operating the proposed program, and that the provider
4 is willing and able to accept AFDC-FC children for placement
5 who are determined by the placing agency to need the level of care
6 and services that will be provided by the program.

7 (C) To ensure efficient administration of the department's audit
8 responsibilities, and to avoid the fraudulent creation of records,
9 group home programs shall make records that are relevant to the
10 RCL determination available to the department in a timely manner.
11 Except as provided in this section, the department may refuse to
12 consider, for purposes of determining the rate, any documents that
13 are relevant to the determination of the RCL that are not made
14 available by the group home provider by the date the group home
15 provider requests a hearing on the department's RCL
16 determination. The department may refuse to consider, for purposes
17 of determining the rate, the following records, unless the group
18 home provider makes the records available to the department
19 during the fieldwork portion of the department's program audit:

20 (i) Records of each employee's full name, home address,
21 occupation, and social security number.

22 (ii) Time records showing when the employee begins and ends
23 each work period, meal periods, split shift intervals, and total daily
24 hours worked.

25 (iii) Total wages paid each payroll period.

26 (iv) Records required to be maintained by licensed group home
27 providers under Title 22 of the California Code of Regulations
28 that are relevant to the RCL determination.

29 (D) To minimize financial abuse in the startup of group home
30 programs, when the department's RCL determination is more than
31 three levels lower than the RCL level proposed by the group home
32 provider, and the group home provider does not appeal the
33 department's RCL determination, the department shall terminate
34 the rate of a group home program 45 days after issuance of its
35 program audit report. When the group home provider requests a
36 hearing on the department's RCL determination, and the RCL
37 determined by the director under subparagraph (E) is more than
38 three levels lower than the RCL level proposed by the group home
39 provider, the department shall terminate the rate of a group home
40 program within 30 days of issuance of the director's decision.

1 Notwithstanding the reapplication provisions in subparagraph (B),
2 the department shall deny any request for a new or increased RCL
3 from a group home provider whose RCL is terminated pursuant
4 to this subparagraph, for a period of no greater than two years from
5 the effective date of the RCL termination.

6 (E) A group home provider may request a hearing of the
7 department's RCL determination under subparagraph (A) no later
8 than 30 days after the date the department issues its RCL
9 determination. The department's RCL determination shall be final
10 if the group home provider does not request a hearing within the
11 prescribed time. Within 60 days of receipt of the request for
12 hearing, the department shall conduct a hearing on the RCL
13 determination. The standard of proof shall be the preponderance
14 of the evidence and the burden of proof shall be on the department.
15 The hearing officer shall issue the proposed decision within 45
16 days of the close of the evidentiary record. The director shall adopt,
17 reject, or modify the proposed decision, or refer the matter back
18 to the hearing officer for additional evidence or findings within
19 100 days of issuance of the proposed decision. If the director takes
20 no action on the proposed decision within the prescribed time, the
21 proposed decision shall take effect by operation of law.

22 (2) Group home programs that fail to maintain at least the level
23 of care and services associated with the RCL upon which their rate
24 was established shall inform the department. The department shall
25 develop regulations specifying procedures to be applied when a
26 group home fails to maintain the level of services projected,
27 including, but not limited to, rate reduction and recovery of
28 overpayments.

29 (3) The department shall not reduce the rate, establish an
30 overpayment, or take other actions pursuant to paragraph (2) for
31 any period that a group home program maintains the level of care
32 and services associated with the RCL for children actually residing
33 in the facility. Determinations of levels of care and services shall
34 be made in the same way as modifications of overpayments are
35 made pursuant to paragraph (2) of subdivision (b) of Section
36 11466.2.

37 (4) A group home program that substantially changes its staffing
38 pattern from that reported in the group home program statement
39 shall provide notification of this change to all counties that have
40 placed children currently in care. This notification shall be provided

whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for the 2002–03, 2003–04, 2004–05, 2005–06, and 2006–07 fiscal years is:

Rate	Point Ranges	FY 2002-03, 2003-04, 2004-05, 2005-06, and 2006-07
Classification		
Level		Standard Rate
1	Under 60	\$1,454
2	60- 89	1,835
3	90-119	2,210
4	120-149	2,589
5	150-179	2,966
6	180-209	3,344
7	210-239	3,723
8	240-269	4,102
9	270-299	4,479
10	300-329	4,858
11	330-359	5,234
12	360-389	5,613
13	390-419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03, 2003–04, 2004–05, 2005–06, and 2006–07 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate	Adjusted Point Ranges
Classification	for the 2002-03, 2003-04, 2004-05, 2005-06, and 2006-07
Level	Fiscal Years
1	Under 54
2	54- 81
3	82-110

1	4	111-138
2	5	139-167
3	6	168-195
4	7	196-224
5	8	225-253
6	9	254-281
7	10	282-310
8	11	311-338
9	12	339-367
10	13	368-395
11	14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03, 2003–04, 2004–05, 2005–06, and 2006–07 fiscal years shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level (RCL) for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider, or for an existing program at a new location of an existing provider, unless the provider submits a letter of recommendation from the host county, ~~the primary placing county, or a regional consortium of counties that~~ includes all of the following:

(A) That the program is needed by that county.

(B) That the provider is capable of effectively and efficiently operating the program.

(C) That the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

~~(D) That, if the letter of recommendation is not being issued by the host county, the primary placing county has notified the host county of its intention to issue the letter and the host county was given the opportunity 30 days to respond to this notification and to discuss options with the primary placing county.~~

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the

1 purpose of making decisions and recommendations about the need
2 for, and use of, group home programs and other foster care
3 providers within the regions.

4 (3) The department shall annually conduct a county-by-county
5 survey to determine the unmet placement needs of children placed
6 pursuant to Section 300 and Section 601 or 602, and shall publish
7 its findings by November 1 of each year.

8 (j) The department shall develop regulations specifying
9 ratesetting procedures for program expansions, reductions, or
10 modifications, including increases or decreases in licensed capacity,
11 or increases or decreases in level of care or services.

12 (k) (1) For the purpose of this subdivision, “program change”
13 means any alteration to an existing group home program planned
14 by a provider that will increase the RCL or AFDC-FC rate. An
15 increase in the licensed capacity or other alteration to an existing
16 group home program that does not increase the RCL or AFDC-FC
17 rate shall not constitute a program change.

18 (2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the
19 rate for a group home program shall not increase, as the result of
20 a program change, from the rate established for the program
21 effective July 1, 2000, and as adjusted pursuant to subparagraph
22 (B) of paragraph (1) of subdivision (g), except as provided in
23 paragraph (3).

24 (3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years,
25 the department shall not establish a rate for a new program of a
26 new or existing provider or approve a program change for an
27 existing provider that either increases the program’s RCL or
28 AFDC-FC rate, or increases the licensed capacity of the program
29 as a result of decreases in another program with a lower RCL or
30 lower AFDC-FC rate that is operated by that provider, unless both
31 of the following conditions are met:

32 (i) The licensee obtains a letter of recommendation from the
33 host county, primary placing county, or regional consortium of
34 counties regarding the proposed program change or new program.

35 (ii) The county determines that there is no increased cost to the
36 General Fund.

37 (B) Notwithstanding subparagraph (A), the department may
38 grant a request for a new program or program change, not to exceed
39 25 beds, statewide, if both of the following conditions are met:

1 (i) The licensee obtains a letter of recommendation from the
2 host county, primary placing county, or regional consortium of
3 counties regarding the proposed program change or new program.

4 (ii) The department determines that the new program or program
5 change will result in a reduction of referrals to state hospitals
6 during the 1998–99 fiscal year.

7 (l) General unrestricted or undesignated private charitable
8 donations and contributions made to charitable or nonprofit
9 organizations shall not be deducted from the cost of providing
10 services pursuant to this section. The donations and contributions
11 shall not be considered in any determination of maximum
12 expenditures made by the department.

13 (m) The department shall, by October 1 of each year,
14 commencing October 1, 1992, provide the Joint Legislative Budget
15 Committee with a list of any new departmental requirements
16 established during the previous fiscal year concerning the operation
17 of group homes, and of any unusual, industrywide increase in costs
18 associated with the provision of group care that may have
19 significant fiscal impact on providers of group homes care. The
20 committee may, in fiscal year 1993–94 and beyond, use the list to
21 determine whether an appropriation for rate adjustments is needed
22 in the subsequent fiscal year.